IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

DIANE K. CHRISTIANSON,	
Plaintiff,	No. 4-97-CV-20826
vs. WILLIAM J. HENDERSON, Postmaster General,	RULING ON MOTION TO ENFORCE SETTLEMENT AND AWARD OF ATTORNEY FEES
Defendant.	

The Court has before it Plaintiff's Motion to Enforce Settlement and Alternative Motion for Continuance (Clerk's No. 55). Defendant filed a Resistance, and the matter is submitted.

I. Background.

The following facts are undisputed. Plaintiff, Diane Christianson, sought damages on the basis of sexual discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e – 2000e-17 (1994 & West Supp. 1997). Trial in this case was set for November 17, 1999. The parties participated in a settlement conference on October 29, 1999, but did not settle the case. On Monday, November 1, 1999, following a pretrial conference, Plaintiff's attorney faxed to Defendant's attorney a settlement offer that included the following terms:

- 1. That within the next 30 to 60 days Diane would be placed in an OIC [Officer in Charge] position in a level 18 Postmaster job. Her salary level would be redlined at its current level.
- 2. That if she serves in the OIC capacity for 90 days, without any disciplinary matters pending, she would be given the Postmaster's position in the Geneseo [Illinois] office.
- 3. That her sick leave be reinstated.

- 4. That she be allowed the advanced leadership program.
- 5. That she receive the relocation benefits when she is eventually transferred to Geneseo.
- 6. The sum of \$40,000.00 which would represent \$25,000 to Dian[]e and \$15,000.00 for attorney fees.
- Pl.'s Ex. A. Later that day, Defendant's attorney in response faxed the following counteroffer:

I have been authorized to make the following new counter-offer for the settlement of the . . . case:

- 1. Within the next 60 days, Ms. Christianson, will be placed in an OIC position level 18 postmaster job, with her salary redlined at its current level.
- 2. If she serves in said OIC capacity for 90 days without any pending disciplinary matters, she will be given the postmaster position in Geneseo, Illinois, when it becomes open. If the position comes open within the above referenced 90 day period, it will be held open for Ms. Christianson until said 90 day period expires.
- 3. Reinstatement of sick leave.
- 4. Participation in the advanced leadership program.
- 5. Standard relocation benefits for transfer to Geneseo.
- 6. \$18,000 to be distributed as Ms. Christianson directs.

The offer of a specific position in return for settling a complaint is almost unheard of in the Postal Service This is a major concession

Pl.'s Ex. B. On November 2, 1999, Plaintiff's attorney faxed to Defendant's attorney a handwritten counteroffer, which reserved the issue of attorney fees, stating in part as follows:

I spoke with Diane last night. Items 1 -- 5 are acceptable. Diane told me that \$20,000 is the absolute lowest she will go. I believe her and I don't want to lose her settlement mode. How about we agree on 20 to Diane, w[ith] my fees to be determined by either [Judge] Bremer or Walters. Let me know ASAP. I have been holding off on subpoenas.

Pl. 's Ex. C.

When Defendant's attorney read the November 2 handwritten counteroffer, he "inadvertently overlooked the 'with my fees to be determined by either Bremer or Walters'

language" in the offer. (Hayward Aff. at ¶ 8.) On November 2, Defendant's attorney called Defendant and relayed the terms of the counteroffer, except for the provision to have a judge determine fees. Defendant authorized its attorney to accept the handwritten counteroffer. Defendant's attorney called Plaintiff's attorney and said Defendant accepted the offer, and asked Plaintiff's attorney to reduce the settlement agreement to writing.

Plaintiff's counsel notified Plaintiff that the case was settled. Plaintiff's attorney canceled the deposition set for November 3, 1999, and informed witnesses that their attendance at trial would not be needed. Plaintiff's counsel reduced the settlement agreement to writing, and at 2:30 p.m. on November 2, 1999, Plaintiff's attorney faxed a written draft of the settlement agreement to Defendant's attorney. The draft substantially restated items 1 through 5 as proposed in Defendant's November 1 faxed counteroffer, the only difference in those items being that the November 2 draft specified the United States Postal Service would reinstate 375 hours of sick leave for Plaintiff during pay periods 3 through 15 in 1997. (Pl.'s Ex. D.) The written draft also stated in part as follows:

- 6. That the United States Postal Service shall pay to Diane K. Christianson the sum of \$20,000.00 within thirty (30) days of the execution of this Agreement.
- 7. That the parties further agree and stipulate for the purpose of determining payment of attorney fees only, that Diane K. Christianson shall be considered by the Court as a prevailing party in this matter. The parties agree that the Plaintiff's Attorney, Mark R. Crimmins, shall submit a statement for services to the Honorable Celeste F. Bremer, District Court Judge for the Southern District of Iowa, for determination of the appropriate amount of attorney fees which shall be paid by the Postal Service upon determination by the Court.

Pl.'s Ex. D at 3. After Defendant's attorney read the drafted settlement agreement on November 3, he informed Plaintiff's attorney that Defendant did not agree to pay attorney fees in addition to the \$20,000. The record does not indicate that Defendant's attorney objected to any other aspect of the agreement as reduced to writing.

On November 5, the parties entered a second, oral settlement agreement. The terms

were substantially the same as the first, with the exception of the provision regarding attorney fees. Under the November 5 agreement, the parties reserved the issue of fees by providing that the Court would first determine whether the parties had previously entered into a binding settlement agreement under which the defendant would pay the plaintiff attorney fees, and if so, the Court would next determine the amount of such fees. Under the November 5 agreement, the settlement amount, exclusive of fees, totaled \$20,000, the same as under the November 2 agreement.

On November 8, Plaintiff filed the present Motion to enforce the November 2 settlement agreement and, alternatively, to continue the trial. The Court continued the November 17, 1999, trial. Defendant resists the Motion to Enforce Settlement, asserting that the parties never entered a valid, enforceable settlement agreement on November 2, 1999.

On November 30, 1999, the parties reduced the November 5 settlement agreement to writing. (Reply Br. Support Award Atty Fees, Nov. 30, 1999, Settlement Agreement.) The parties do not contend the final written agreement differs in any material way from the November 5 oral settlement agreement.

II. Discussion.

Basic contract principles govern the existence and enforceability of a settlement agreement. *Sheng v. Starkey Laboratories, Inc.*, 117 F.3d 1081, 1083 (8th Cir. 1997). The Eighth Circuit has not yet determined whether state or federal common law governs Title VII settlement agreements. *Id.* at 1083 n.1. This Court need not determine which law controls, because the choice of law makes no practical difference in this case. *See id.*

First, Defendant argues the parties never reached a binding agreement before November 5, 1998, because the earlier faxed messages, and the November 2 telephone conversation, did not constitute an enforceable contract but only preliminary negotiations and an expression of terms to which they tentatively agreed.

Iowa courts follow the principles set forth in Comments a and b to section 27 of the Restatement (Second) of Contracts:

- a. Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.
- b. On the other hand, if either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has been reduced to another written form, the preliminary negotiations and agreement do not constitute a contract.

Faught v. Budlong, 540 N.W.2d 33, 35 (Iowa 1995); see also Continental Labs., Inc. v. Scott Paper Co., 759 F. Supp. 538, 540 (S.D. Iowa 1990), aff'd, 938 F.2d 184 (8th Cir. 1991) (Table). An oral agreement may be enforceable, even though the parties contemplate it will be reduced to writing and signed, if its terms are complete and the parties have finally agreed to the terms. Faught, 540 N.W.2d at 35 (citing Elkader Co-op. Co. v. Matt, 204 N.W.2d 873, 875 (Iowa 1973)). Conversely, the parties may intend that an obligation will arise only after they sign a written instrument containing the terms to which they have tentatively agreed. Id.

"Whether the parties intended the oral agreement to be binding prior to the execution of a written document is the decisive issue." *Employee Benefits Plus, Inc. v. Des Moines General Hosp.*, 535 N.W.2d 149, 154 (Iowa Ct. App. 1995) (holding negotiations and course of dealing between parties supported district court's finding that corporation and hospital intended to form oral contract). To determine whether parties have reached a binding agreement, Iowa courts consider the following factors:

[T]he extent to which express agreement has been reached on all the terms to be included, whether the contract is of a type usually put in writing, whether it needs a formal writing for its full expression, whether it has few or many details, whether it is a common or unusual contract, whether a standard form of contract is widely used in similar transactions, and whether either party takes any action in preparation for performance during the negotiations. Such circumstances may be shown by oral testimony or by correspondence or other preliminary or partially complete writings.

Faught, 540 N.W.2d at 36 (quoting Restatement (Second) of Contracts § 27 cmt. c (1979)).

An agreement to settle litigation does not need a formal writing for its full expression. *Cf. Wray v. Clarke*, 151 F.3d 807, 808-809 (8th Cir. 1998) (holding inmates failed to reserve post-settlement claim for attorney fees when they reached settlement agreement during conference; parties attempted but failed to draft document embodying terms of agreement); *Dillon v. City of Davenport*, 366 N.W.2d 918, 925 (Iowa 1985) ("an oral agreement to settle litigation is binding;" citing *Cunningham v. Iowa-Illinois Gas & Elec. Co.*, 55 N.W.2d 552, 554-55 (1952)).

The settlement agreement reached in this case is not complicated, and except for the fees issue, there is no dispute as to its terms. In reliance on the settlement agreement reached November 2, Plaintiff took steps in preparation for performance. Based on these factors and the circumstances of this case, the Court finds that on November 2 the parties intended the plaintiff's faxed counteroffer and the defendant's oral acceptance to be a binding contract, the terms of which included an obligation to subsequently execute a final writing that would contain the provisions to which the parties had agreed.

Defendant next argues it had a mistaken understanding concerning whether the \$20,000 settlement amount included attorney fees, because Defendant's attorney overlooked the provision requiring a judge's determination of attorney fees, and consequently misinformed Defendant concerning the issue. Defendant argues its attorney's mistake precluded a meeting of the parties' minds, an essential element to contract formation, thus

vitiating the validity of Defendant's November 2 consent to the agreement. The Court construes Defendant's argument as asserting the existence of a unilateral mistake concerning the settlement agreement's scope, with the unilateral mistake being caused by Defendant's attorney. ¹

The general rule in Iowa is that unless a unilateral mistake of fact or law is accompanied by fraud or other inequitable conduct by the other party, the mistake is insufficient to rescind or reform the agreement. *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852, 855 (Iowa 1990); *Gouge v. McNamara*, 586 N.W.2d 710, 713 (Iowa Ct. App. 1998). Here, Defendant has not alleged fraud or other inequitable conduct. Should an exception to the general rule apply in this case, on the basis that the unilateral mistake was caused by the attorney of the mistaken party?

In entering a settlement agreement, a party bears the risk of its counsel's mistake. See TCBY Systems, Inc. v. EGB Associates, Inc., 2 F.3d 288, 291 (8th Cir. 1993) (holding EGB agreed to dismiss lawsuit with prejudice for \$28,000, and misunderstanding as to legal effect of dismissal was insufficient to void agreement; discussing with approval Nemaizer v. Baker, 793 F.2d 58 (2d Cir. 1986), where court found counsel's misunderstanding could not void settlement agreement), cert. denied, 511 U.S. 1108 (1994). When a party challenges a settlement agreement's validity on the ground that the party's consent is void because its attorney misled the client, the decisive factors are whether sufficient authority existed to enter into the agreement, and whether the opposing party should be deprived of the benefits of the settlement agreement negotiated. See McEnany v. West Delaware County Comm. Sch. Dist., 844 F. Supp. 523, 531 (N.D. Iowa 1994) (when party alleged settlement was result of coercion or undue pressure from party's own attorney, court held

 $^{^1}$ Defendant states the issue here does not concern mutual mistake. (Reply Br. Support Award Atty Fees, at 7 n.3.)

settlement was valid, having concluded party's attorney had express authority to settle case, and parties should not be deprived of benefits of settlement agreement on ground one party rejected it as inadequate); *Jones v. International Paper Co.*, No. 98-3591, 1999 WL 427333, at *1 (8th Cir. June 8, 1999) (per curiam) (granting motion to enforce settlement agreement in employment discrimination action, when plaintiff stated that because he believed he could withdraw his offer at later time, he allowed his attorney to make offer that was accepted; stating adequacy of plaintiff's legal representation was irrelevant to finding attorney had authority to settle). Furthermore, a party's misunderstanding of the legal effect of an action does not constitute a "mistake" sufficient to void an agreement. *TCBY Systems*, 2 F.3d at 290-91. Generally, public policy favors the enforcement of voluntary settlement agreements. *Cf. Joe v. First Bank Sys., Inc.*, Nos. 98-2294/98-2398, 2000 WL 146480, at *2 (8th Cir. Feb. 11, 2000).

Based on the above principles, the Court holds the fact that Defendant's unilateral mistake was caused by its attorney does not warrant an exception to the rule that a unilateral mistake is insufficient to rescind or reform an agreement, unless fraud or other inequitable conduct by the other party accompanies the mistake. The record shows Defendant authorized its attorney to accept Plaintiff's handwritten counteroffer on November 2. The Court finds sufficient authority existed to enter into the agreement. Plaintiff should not be deprived of the benefits of the settlement agreement she negotiated on the grounds Defendant now regards it as unacceptable. *See McEnany*, 844 F. Supp. at 531. Because Defendant has not alleged fraud or other inequitable conduct on Plaintiff's part, it has not adequately pled unilateral mistake as a defense to enforcement of the settlement agreement. Furthermore, the Court holds the amount of attorney fees awarded below does not entitle Defendant to an exception to the general rule on the basis the result is unconscionable. *See Farmers Sav. Bank v. Gerhart*, 372 N.W.2d 238, 243-44 (Iowa 1985).

Finally, Defendant argues the November 2, 1999, agreement was not a valid,

enforceable settlement because it left unresolved substantial matters, including the following: Plaintiff's pay grade, whether a disciplinary action disposed of during the interim assignment would preclude her advancement to the Geneseo job, and how long the Geneseo job would remain open. Defendant contends the differences in the November 2 draft settlement agreement and the November 30 formal document embodying the terms of the November 5 settlement agreement show the magnitude of the unsettled matters.

After Defendant filed a motion to enforce the November 2 settlement agreement, the parties negotiated a final settlement agreement on November 5, settling all claims except the issue of whether the parties had earlier entered an enforceable agreement to have the Court determine attorney fees. Enforcement of the remaining terms of the November 2 agreement had become moot, because the November 5 agreement superceded the earlier agreement. In entering the November 5 settlement agreement, the parties were thus free to raise and negotiate issues not covered by the November 2 agreement. The surrounding circumstances had changed, and negotiation of the second settlement agreement included a new issue: Whether the November 2 agreement was final and enforceable, especially relating to the provision for the Court to determine fees. It is unsurprising that given the new circumstances and issue, the parties' bargaining would include some terms modified from those in the November 2 agreement. The terms of the November 5 agreement, as embodied in the November 30 written instrument, clarified and circumscribed some terms of the November 2 agreement, but were not materially different. Under the circumstances of this case, the differences between the two agreements do not indicate the parties failed to enter an enforceable agreement on November 2. Cf. Sheng, 117 F.3d at 1083 (stating enforceable settlement requires parties to reach agreement on essential terms of deal; material issues were those on which deal hinged). The fact that the parties' settlement agreement, as embodied in the November 30 instrument, included the agreement to have the Court resolve the fee issue, indicates the parties reached a settlement on November 2 on

the essential terms of the deal, notwithstanding Defendant's intent concerning fees. *See id.*; *MIF Realty L.P. v. Rochester Assoc.*, 92 F.3d 752, 756 (8th Cir. 1996) (holding district court erred in finding parties agreed to settlement, when parties never reached settlement agreement, even by time of appellate argument).

The Court holds the November 2, 1999, settlement agreement, including the reservation of the fees issue, was a valid, enforceable agreement. No substantial factual issues remain to be resolved by an evidentiary hearing. *See Barry v. Barry*, 172 F.3d 1011, 1013 (8th Cir. 1999) (stating district court has considerable discretion in determining appropriate procedure on a motion to compel settlement, and hearing need be held only if substantial questions of fact are not already a matter of record.) Therefore, under the terms of the November 5 agreement, as embodied in the November 30 written instrument, Plaintiff is entitled to a fee award. The Court next analyzes the amount of the award.

C. Amount of Award.

In actions brought under Title VII, a court may exercise its discretion by awarding the prevailing party reasonable costs, including attorney fees. *See* 42 U.S.C. §§ 1988(b), 2000e-5(k) (1994).

A prevailing party in a Title VII action is entitled to recover costs, including reasonable attorney fees. *Arneson v. Callahan*, 128 F.3d 1243, 1248 (8th Cir. 1997) (citing § 42 U.S.C. 2000e-5(k)), *cert. denied*, 524 U.S. 926 (1998); *Peanick v. Morris*, 96 F.3d 316, 322 (8th Cir. 1996). A party prevails when it obtains actual relief on the merits of its claim, including a settlement, that materially alters the legal relationship between the parties. *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992); *Tyler v. Corner Construction Corp.*, 167 F.3d 1202, 1204 (8th Cir. 1999). Here, Plaintiff meets that test.

The degree of a plaintiff's success in relation to the other goals of the lawsuit is a factor critical in determining the size of a reasonable fee, not whether to grant a fee award. *See Parton v. GTE North, Inc.*, 971 F.2d 150, 156 (8th Cir. 1992) (quoting *Texas State*

Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 790 (1989)).

1. Lodestar for Fees.

In civil rights cases, the attorney fees amount is generally determined by multiplying the reasonable number of hours spent on litigation by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Jensen v. Clarke*, 94 F.3d 1191, 1203 (8th Cir. 1996). This is known as the lodestar. *See Casey v. City of Cabool*, 12 F.3d 799, 805 (8th Cir. 1993) (citing *Hendrickson v. Branstad*, 934 F.2d 158, 162 (8th Cir. 1991)), *cert. denied*, 513 U.S. 932 (1994). In evaluating the reasonable number of hours spent on litigation, unnecessary or redundant hours should be excluded. *Cf. Hawkins v. Anheuser-Busch, Inc.*, 697 F.2d 810, 817 (8th Cir. 1983) (awarding paralegal fees because they were reasonable and not duplicative).

A reasonable hourly rate usually relates to the local legal market. *See Forshee v. Waterloo Indus., Inc.*, 178 F.3d 527, 532 (8th Cir. 1999). In specialized areas of law, the national market may provide a reasonable hourly rate. *See Casey*, 12 F.3d at 805 (explaining that in some areas like civil rights, fees might more appropriately be determined by a national market). "Reasonable fees" are calculated according to the similar services by lawyers of reasonably comparable skill, experience and reputation in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895, n.11 (1984) (cited in *McDonald v. Armontrout*, 860 F.2d 1456, 1458 (8th Cir. 1988)).

Twelve factors help guide a court in determining the lodestar. These factors include:

- (1) the time and labor required; (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Hensley, 461 U.S. at 429-30 & n.3 (quoting Johnson v. Georgia Highway Exp., Inc., 488

F.2d 714, 717-19 (5th Cir. 1974)); *St. Louis Firefighters Ass'n v. City of St. Louis*, 96 F.3d 323, 332, n. 10 (8th Cir. 1996). In granting attorney fees in a civil rights discrimination case, the Eighth Circuit Court of Appeals has also recently emphasized the importance of considering fee awards in similar cases. *See Thorne v. Welk Inv., Inc.,* 197 F.3d 1205, 1213 (8th Cir. 1999). A court can also use its own knowledge, experience and expertise in determining the fee to be awarded. *Gilbert v. City of Little Rock*, 867 F.2d 1063, 1066-67 (8th Cir.), *cert. denied*, 493 U.S. 812 (1989).

a. Hourly Rate.

To assess the fee claim, the Court begins by determining whether the hourly rate requested by Plaintiff's counsel, Mark Crimmins, is reasonable. Crimmins requests \$125 per hour for each attorney who worked on this case: Crimmins, Angela Ostrander, and Brian Yung. Most of the hours claimed were for work by Crimmins, who was admitted to practice in 1985. Ostrander and Yung were admitted to practice in 1984 and 1989, respectively. Paralegal time is charged at \$40 per hour.

The Court sets the reasonable hourly rate in the Iowa market at \$125 per hour for Attorneys Crimmins and Ostrander, and at \$100 per hour for Attorney Yung.

b. Reasonable Hours Spent.

In evaluating the reasonable number of hours spent on litigation, unnecessary or redundant hours should be excluded. *See Hawkins*, 697 F.2d at 810. If the plaintiff fails to adequately document attorney fees and costs, a reduced fee may be warranted. *H.J.*, *Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991). Local Rule 54.2 requires that fee claims shall be supported by adequate itemization, including the amount of time claimed for any specific tasks, as well as the hourly rate. Review of this claim would have been expedited if Local Rule 54.2 had been followed completely, and the requisite categories enumerated.

Crimmins' billing records in this case were provided for review. I have carefully

reviewed Crimmins' entire bill, and find that he has adequately documented the services rendered. Crimmins requests a total of 239.35 hours for attorneys and 15.50 hours for paralegal time. The total fee requested is \$30,538.75.

Most of the billed hours appear reasonable; however, portions appear unnecessary and duplicative. I find the total redundancy to be approximately one-third of the hours claimed, based upon a review of the bill.

After reducing the hourly rate of Attorney Yung, as noted above, and after reducing the hours because of duplication, the Court grants Plaintiff's Motion in regard to attorney fees in the amount of \$19,645. This amount reflects the following calculations:

Fees:

Client Conference and Interviews	\$ 4,375.00
Pleadings and Discovery	6,750.00
Research	4,025.00
Trial Preparation/Settlement Conference	2,125.00
Travel	1,750.00
Legal Assistant	620.00
TOTAL	\$19,645.00

2. Costs.

Based upon a review of the bill submitted pursuant to 42 U.S.C. § 1988, the following costs are awarded:

Filing Fee	\$	150.00
Mileage	\$	425.00
Postage	\$	21.50
Report	\$	31.25
Service	\$	112.08
Depositions	<u>\$1.</u>	905.63
TOTAL	\$2.	645.46

Plaintiff requests \$20 in electronic research expenses. In this circuit, "computer based legal research must be factored into the attorneys' hourly rate, hence the cost of

the computer time may not be added to the fee award." *Standley v. Chilhowee R-IV Sch. Dist.*, 5 F.3d 319, 325 (8th Cir. 1993). Plaintiff's request for reimbursement of electronic research expense is denied.

3. Summary of Fees Award.

Plaintiff's Motion (Clerk's No. 55) is granted to the extent it seeks an award of attorney fees and costs. ² Judgment in the amount of \$22,290.46 is entered in favor of Plaintiff for fees and costs.

IT IS SO ORDERED.

DATED this ____ day of March, 2000.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE

² Because the November 5 agreement superceded the November 2 agreement, thus making the terms of the earlier agreement moot, the Court's holding does not, of course, reinstate any terms of the November 2 agreement.